

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Stock <i>et al.</i>	Art Unit:	1657
Patent Number:	7,794,965	Issue Date:	September 14, 2010
Serial Number:	10/579,369	Filing Date:	May 15, 2006
		Conf. No.:	3055
For:	METHOD OF IDENTIFYING MODULATORS OF PP2A METHYLASE		

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 35 U.S.C. § 154(b) AND 37 C.F.R. § 1.705(d)

Applicant requests reconsideration of the patent term adjustment indicated on the face of U.S. Patent Number 7,794,965, issued on September 14, 2010. Applicant submits that this Application for Patent Term Adjustment is timely because it is filed within two months of the Issue Date of the above-referenced patent (*i.e.*, on or before November 14, 2010), in accordance with 37 C.F.R. § 1.705(d). A copy of the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) ("the PTA Determination") is attached and labeled "Exhibit A."

In accordance with 37 C.F.R. § 1.705(b)(1), Applicant submits that an amount of \$200.00 as set forth in 37 C.F.R. § 1.18(e) is being paid via the U.S. Patent and Trademark Office's (USPTO's) electronic filing system's credit card payment option.

Applicant submits that the correct patent term adjustment under 35 U.S.C. § 154(b) up to the Issue Date of September 14, 2010 is **zero (0)** days. Applicant provides the following statement of facts in accordance with the requirements 37 C.F.R. §§ 1.705(b)(2) and 1.705(d):

- 1) The PTA Determination indicates that:
 - a) there were 282 days of USPTO delays under 35 U.S.C § 154(b)(1)(A) ("A-type delays") and 605 days of USPTO delays under 35 U.S.C § 154(b)(1)(B) ("B-type delays");

- b) there were 222 days in which A-type delays and B-type delays overlapped, and that there were 665 non-overlapping days;
 - c) there were 168 days of Applicant delays; and
 - d) Applicant was, therefore, entitled to 497 days of PTA.
- 2) It appears that the USPTO erred in its calculation of the number of days of Applicant delay, as explained in paragraphs 3-9, below.
- 3) The above-referenced patent was filed as a 35 U.S.C. § 371 national phase application of PCT serial number PCT/US03/07658, which was filed on March 13, 2003 and which claims priority to U.S. provisional patent application serial number 60/363,537, filed on March 13, 2002. The deadline for filing the § 371 application was, therefore, September 13, 2004. The § 371 national phase application was not filed by September 13, 2004. A Petition to Revive an Unintentionally Abandoned Application was filed, along with a complete § 371 application, on May 15, 2006.
- 4) It appears that the USPTO calculated the B-type delay by using the § 371 national phase deadline of September 13, 2004, as the filing date of the above-referenced patent. This appears to be proper, as “[t]he period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application . . .” (37 C.F.R. § 1.703(b); underlining added).
- 5) The USPTO determined that there were 605 days of B-type delay, which apparently corresponded to the number of days falling between the filing of the § 371 application on September 13, 2007 and the filing of a Request for Continued Examination (“RCE”) on May 11, 2009.
- 6) It does not appear that the USPTO included the duration of the abandonment of the application in its calculation of Applicant’s delays on the PTA Determination. However, 37 C.F.R. § 1.704(c)(3) indicates that the duration of abandonment should be included in calculating the duration of Applicant delay:

“Abandonment of the application . . . [shall result in PTA reduction] by the number of days, if any, beginning on the date of abandonment . . . and ending on the earlier of:

- (i) The date of mailing of the decision reviving the application . . . ; or

- (ii) The date that is four months after the date the grantable petition to revive application . . . was filed”
- 7) The application was abandoned on September 13, 2004. A grantable petition to revive was filed on May 15, 2006, and the date of mailing of the decision reviving the application was mailed on August 14, 2006. Thus, the date of mailing of the decision reviving the application (*i.e.*, August 14, 2006) is earlier than the date that is four months after the date the grantable petition to revive was filed (*i.e.*, September 15, 2010). Applicant’s delays, therefore, should have included the 701 day period between September 13, 2004, and August 14, 2006.
- 8) It appears that Applicant’s total delay, therefore, should have been calculated as 168 (as listed on the PTA Determination) + 701 (the period of abandonment described in this paper), totaling 869 days.
- 9) It appears that Applicant is, therefore, entitled to zero (0) days of PTA, because the number of days of Applicant delay (*i.e.*, 869 days) exceeds the total number of non-overlapping USPTO delays (*i.e.*, 665 days).
- 10) Any circumstances during the prosecution of the above-referenced application that constituted a failure to engage in reasonable efforts to conclude processing of examination of such application as set forth in 37 C.F.R. § 1.704 were either taken into account in the initial calculation of PTA as indicated in the PTA Determination or have been explained in paragraphs 2-9 of this paper.
- 11) Applicant submits that the above-referenced patent is not subject to a terminal disclaimer.

Conclusion

Applicant submits that the correct patent term adjustment under 35 U.S.C. § 154(b) after issuance of the patent is zero (0) days. Reconsideration is respectfully requested.

If for any reason, this Petition is found not to comply with the requirements of 37 C.F.R. § 1.705, or is otherwise found improper, please contact the undersigned agent by telephone.

Respectfully submitted,

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